

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES JACKSON,

Petitioner,

v.

ORDER
08-CV-029S

JAMES MORRISEY,

Respondent.

1. On January 11, 2008, Petitioner commenced this civil action *pro se* by filing a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Docket No. 1.) On August 8, 2008, this Court referred the case to the Honorable Hugh B. Scott, United States Magistrate Judge, to hear and report upon dispositive motions and issue a Report and Recommendation containing findings of fact, conclusions of law and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B). (Docket No. 15.)

2. Following this Court's referral Order, Petitioner filed a Motion for Summary Judgment. (Docket No. 30¹.) And on March 13, 2009, Petitioner filed a Motion for Judgment as a Matter of Law (Docket No. 38.²)

¹ In support of his summary judgment motion, Petitioner submitted the following documents: a seven page memorandum of law, three "statements," two of which discuss Gill v. Green, a case in which Plaintiff offers no citation, a parole computation, and a submission regarding N.Y. Executive Law § 259(i)(3)(f)(xi) and 9 N.Y.C.- R.R. 8005-20(f). (Docket Nos. 33-37.)

² In support of his motion for judgment as a matter of law, Petitioner submitted two memorandums of law and two affidavits. (Docket Nos. 40-41 and 44-45.) Respondent submitted an affidavit and a memorandum of law in opposition to Petitioner's motion. (Docket No. 44-45.)

3. On July 28, 2009, Judge Scott filed a Report and Recommendation recommending that Petitioner's Petition for a Writ of Habeas Corpus, his Motion for Summary Judgment, and his Motion for Judgment as a Matter of Law all be denied. (Docket No. 46.) Thereafter, Petitioner timely submitted Objections to Judge Scott's Report and Recommendation. (Docket No. 49.³) In support of his Objections, Petitioner filed a seventy-three page submission. (Id.)

4. This Court has carefully reviewed *de novo* Judge Scott's Report and Recommendation, the Objections thereto, and the applicable law. Upon due consideration, this Court finds no legal or factual error in Judge Scott's Report and Recommendation. Accordingly, this Court denies Petitioner's Objections, and will accept Judge Scott's recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's Report and Recommendation (Docket No. 46) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's Objections thereto (Docket No. 49) are DENIED.

FURTHER, that Petitioner's Petition seeking habeas relief (Docket No. 1) is DENIED.

FURTHER, that Petitioner's Motion for Summary Judgment (Docket No. 30) is DENIED.

³ Upon motion by Petitioner, this Court granted Petitioner an extension of time to submit his Objections to Judge Scott's Report and Recommendation. (Docket No. 48.) On September 3, 2009, Petitioner submitted his Objections. (Docket No. 49.)

FURTHER, that Petitioner's Motion for Judgment as a Matter of Law (Docket No. 38) is DENIED.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that the Clerk of the Court is directed to take the necessary steps to close this case.

SO ORDERED.

Dated: September 22, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge